

REMARKS

In the Office Action mailed March 39, 2006, the Examiner noted that claims 1-42 were pending, allowed claims 21, 24-27, 29 and 30, and rejected claims 1-20, 22, 23, 28 and 31-42. Claims 1 and 3 have been amended, and, thus, in view of the forgoing claims 1-42 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections are traversed below.

In the Action the Examiner objected to claims 1 and 3 and these claims have been amended in consideration of the Examiner comments. Withdrawal of the objection is requested.

Page 2 of the Office Action rejects claims 1-3, 6, 8-10, 16-18, 20, 36 and 41 under 35 U.S.C. § 103 over Danisch and Measurand Inc. Page 5 of the Office Action rejects claims 11, 22, 23 and 32 under 35 U.S.C. § 103 over Danisch, Measurand Inc. and Krishnamurthy. Page 7 of the Office Action rejects claims 11, 22, 23 and 32 under 35 U.S.C. § 103 over Danisch, Measurand Inc. and Shaw. On page 11 of the Office Action, the Examiner rejected claim 42 under 35 U.S.C. § 102 as anticipated by Measurand Inc. With respect to the obviousness rejected independent claims (1, 6, 8, 10, 11, 16, 18, 20, 22, 32 36 and 41), the Examiner acknowledges a defect in the teachings of Danisch ("does not teach producing a smooth virtual curve") and alleges that Measurand Inc supplies the missing teaching, see for example, Acton, page 3. In particular, the Examiner relies on the Measurand Inc teachings with respect to "Tape2000".

First, it is basic patent law that the Examiner must present a prima facie case of obviousness and/or anticipation. Part of a prima facie case is to establish the effective date of the teachings upon which the Examiner relies. It is submitted that the effective date of the teachings of Measurand Inc with respect to the Tape2000 teachings has not been established as noted below and, thus, the Examiner has not established a prima facie case of anticipation or obviousness. Withdrawal of the rejections on this basis is requested.

Although Measurand Inc includes a copyright date of 1999, on page 3 Measurand Inc also notes that it was "Last modified: May 5, 2000". The Examiner has not established that the effective date of the Tape2000 teachings are either 1999 or May 5, 2000. It is often historically the case that products are named for the year in which they are introduced. A prime example is the Windows98 product by Microsoft. It is submitted that the Tape2000 teaching, in view of this historic pattern, were added at the last modified date of May 5, 2000. The present application was filed on March 31, 2000 and thus, if May 5, 2000 is the effective date of the Tape2000

teaches, then the Tape2000 teachings are not prior art. Withdrawal of the rejections on this additional basis is requested.

If the Tape2000 teachings are established as having an effective date associated with the 1999 copyright date, it is also basic patent law that such effective date is the last day of the defined period, that is December 31, 1999, unless it can be shown otherwise. The Examiner has not shown otherwise. In the event that this date (12/31/99) is established or relied upon by the Examiner, the Examiner is informed hereby that this application is based on the article Balakrishnan, R., Fitzmaurice, G., Kurtenbach, G. & Singh, K., "Exploring Interactive Curve and Manipulation Using ShapeTape, a Bend and Twist Sensitive Input Strip", Symposium on Interactive 3d Graphics 26-28 Apr 99 (see the IDS filed with this case where this document was first brought to the attention of the Examiner). As a result, the Examiner should recognize that, if necessary, the applicants can establish a date of invention for the invention of above-identified application at least as early as April 26, 1999 and possibly even earlier. Thus, the applicants can get behind any effective date for Meaurand Inc. that is after April 26, 1999. Withdrawal of the rejections on this further basis is requested.

The rejections are respectfully traversed based on the lack of an established effective date for Meaurand Inc and because an effective date of Meaurand Inc is after the invention by the Applicants. Withdrawal of the rejections is requested.

Second, the Examiner relies on the assertion that the Tape2000 discussion "teaches producing and controlling an entire smmothed virtual tape curve" (see Action, page 3). The Meaurand Inc document, with respect to Tape2000, actually states:

A light weight, wearable, flexible ribbon that uses software (Tape2000) to create a 3D computer image and data set of its shape in real-time, based on bend and twist information from an array of fiber optic sensors along its length. It follows human arm, leg, back and neck movements for motion capture, virtual reality, biomedical, gaming and robotic control applications. It is also used for crash testing, computer aided design, and automotive interior design.

The S1280CS SHAPE TAPE™ operates through the serial port of a Windows PC. Tape2000 software allows viewing a real-time image of the SHAPE TAPE™ and collecting data from the entire tape at up to 120Hz.

(See Meaurand Inc, Shape Tape product page 1 of 3)

As can be seen by reviewing the above text, this text does not teach producing and controlling an entire smmothed virtual tape curve as asserted by the Examiner. Another basic patent law requirement is that a reference be enabling for that which the Examiner relies on in rejecting the claims. It is submitted that Meaurand Inc is not enabling with respect to the subject matter relied upon by the Examiner. The Meaurand Inc. document does not teach anything about

how to produce and control a smooth curve. Specifically, "Tape2000" appears to be an application to display the raw data from the tape. The document mentions nothing about how to get a smooth curve much less any idea about controlling a smooth curve. As a result, Measurand is not an effective reference.

Withdrawal of the rejections on this additional basis is requested.

Krishnamurthy and Shaw do not make up for the deficit of Measurand Inc.

It is submitted that the present claimed invention patentably distinguishes over the effective prior art and withdrawal of the rejection is requested.

It is submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

If any further fees, other than and except for the issue fee, are necessary with respect to this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

Respectfully submitted,

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|---|----------------------------------|------------------------------------|----------------------------|---------------|-------------------|
| | | Application Number | 09/539,872 | | |
| | | Filing Date | March 31, 2000 | | |
| | | First Named Inventor | Ravin BALAKRISHNAN, et al. | | |
| | | Group Art Unit | 2671 | | |
| | | AMOUNT ENCLOSED | 0.00 | Examiner Name | Kimbinh T. Nguyen |
| FEES CALCULATION (fees effective 12/08/04) | | | | | |
| CLAIMS AS AMENDED | Claims Remaining After Amendment | Highest Number Previously Paid For | Number Extra | Rate | Calculations |
| TOTAL CLAIMS | 42 | - 42 = | 0 | X \$ 50.00 = | \$ 0.00 |